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JAMES H. McKENNEY,
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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 276.

JOHNSON BLACKFEATHER, THE PRINCIPAL CHIEF OF THE SHAWNEE TRIBE OF INDIANS, FOR THE USE AND BENEFIT OF THE SHAWNEE INDIANS, *Appellant*,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

SUPPLEMENTAL BRIEF OF APPELLANT.

I.

Appellant by his counsel respectfully begs leave to submit the following:

Bearing upon the construction and meaning of the act of October 1, 1890 and the act of July 6, 1892, we call attention to the title of the last named act, which reads as follows:

> "An act supplementary and amendatory to an act entitled 'An act to refer to the Court of Claims certain claims of the Shawnee and Delaware Indians and the freedmen of the Cherokee Nation and for other purposes,' approved October first, eighteen hundred and ninety."
> United States Statutes at Large, vol. 27, page 86

The foregoing title is significant. It shows that the two acts are to be considered and read as one act, and in construing the same, all the sections are to be considered. It further shows that the legislation was intended to cover and relate to the rights of the Indians as individuals as well as tribes. Not only in the title of the act, but in many parts of the body of the act, they are spoken of as Shawnee and Delaware Indians.

The question of the jurisdiction of the Court seems to have been an after thought upon the part of counsel for the Government; for the subject of jurisdiction is not raised at all, by the pleadings. The demurrer filed is solely upon the ground that "the amended petition does not allege facts sufficient to constitute a cause of action," and we submit that the cause stated in the demurrer is the only one properly before the Court.

II.

Congressional Recognition of Treaty.

On page 27 of our brief we have, under the head of "Official Contemporaneous Interpretation," called attention to the action of the Interior Department. We wish also to call attention to the action of Congress bearing upon this subject.

After the Treaty of 1854 was made, and between that and 1860, the Shawnees were subjected to further loss and damage. They appealed to Congress claiming that under the treaty they should be compensated for their losses, and on the 9th day of May, 1860, an act was passed entitled "An act to provide payment for depredations committed by whites upon the Shawnee Indians in Kansas Territory." (Vol. 12, Stat. at Large, p. 15).

The first section reads as follows:

> "That for the purpose of paying claims of certain members of the Shawnee tribe of Indians

> presented to Congress at its present session, for depredations committed upon their property by citizens of the United States, there is hereby appropriated out of any money in the Treasury not otherwise appropriated, the sum of thirty-six thousand seven hundred and eleven dollars."

The second section of the act relates to the manner of payment.

The above act is a recognition by Congress of the obligations of the United States to pay for damages sustained by the Indians, and is an interpretation of the 14th section of the Treaty of 1854. It is the same act referred to by Mr. Bogy, Commissioner of Indian Affairs, in his letter to the Secretary of the Interior, of January 23, 1867, relating to the claims which are sued for in this action.

We contend, therefore, that our construction of the treaty is approved both by the legislative and executive branches of the government.

III.

Relation Between Government and Indians Stated.

On page 32 of our brief we have called attention to the action of the Supreme Court of the United States bearing upon the interpretation of treaties between the Government and the Indians. In this connection we respectfully refer also to the case of the Cherokee Nation against the State of Georgia, 5 Peters, p. 1.

Mr. Chief Justice Marshall in considering the relation which exists between the United States and the Indians says:

> "If courts were permitted to indulge their sympathies, a case better calculated to excite them

can scarcely be imagined. A people once numerous powerful, and truly independent, found by our ancestors in the quiet and uncontrolled possession of an ample domain, gradually sinking beneath our superior policy, our arts, and our arms, have yielded their lands by successive treaties, each of which contains a solemn gurantee of the residue, until they retain no more of their formerly extensive territory than is deemed necessary to their comfortable existence.

* * * * * * * * *

"Though the Indians are ackonwledged to have an unquestionable and heretofore unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our Government; yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may, more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title, independent of their will, which must take effect in point of possession when their right of posession ceases. Meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian.

"They look to our Government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the president as their great father."

The above decision is expressive of the relation which exists between the United States and the Indian.

Respectfully submitted,

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